

UNDERSTANDING THE CAUDILLO DECISION

California law distinguishes two categories of rape: with and without "grievous bodily injury". The legislature enacted these two categories because it believed that rapists who inflict such injuries as broken bones, stab wounds or concussion should receive extra punishment. The legislators hoped that extra punishment would act as a deterrent to this kind of injury.

It may well be that the deterrent does not work. Indeed, it may be that all rape is so brutalizing that each case should carry the maximum punishment. But if that is so, the legislature must change the law and if it refuses, as it has in the past, it must be called to task.

Only one person has been called to task in the media though, Chief Justice Rose Elizabeth Bird, a woman who did not write the law and does not have the authority to change it.

Five Justices agreed that Mr. Caudillo, guilty of rape, did not inflict "grievous bodily injury" as defined by the law. Five Justices agreed that only the legislature can change that definition.

One Justice wrote a separate decision so as to have an opportunity to publicly express personal repugnance at Caudillo's crime and at the state of the law. That one Justice was Chief Justice Rose Elizabeth Bird. That she might be blamed for the state of the law, and even for the conduct of the criminal, would be shocking if it weren't so sadly familiar to hear rape somehow blamed on a woman.

Chief Justice Bird has the awesome responsibility of upholding the laws of the State of California. She has taken this responsibility with the utmost seriousness. When the laws are unconstitutional, she can strike them. When the laws are simply unconscionable, she can speak out on them, and that is what she has done.

The Caudillo decision was not an easy one to render. It could not be popular. It certainly was not politically expedient. In fact, it required a great deal of personal courage and complete devotion to the law. We can be proud to have a Chief Justice with that courage and devotion - and one who is willing to point out to the legislature its failures and omissions.

SAN DIEGANS FOR
CHIEF JUSTICE ROSE BIRD
P.O. Box 2153, ID #782267
La Mesa, CA 92041

- give \$
Evelyn Clark

236-9279